

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rebecca Ho	Team: Squad #3	CCRB Case #: 201600151	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 01/04/2016 10:10 PM	Location of Incident: § 87(2)(b)	Precinct: 23	18 Mo. SOL 7/4/2017	EO SOL 7/4/2017	
Date/Time CV Reported Tue, 01/05/2016 10:55 PM	CV Reported At: Mayor's Office	How CV Reported: E-mail	Date/Time Received at CCRB Wed, 01/06/2016 12:21 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Sajit Tomy	7575	955585	HBM IRT
2. POM Gabor Kolman	15117	956025	HBM IRT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Frank Gashi	6497	955942	HBM IRT
2. POM Sam Houari	6540	955987	HBM IRT

Officer(s)	Allegation	Investigator Recommendation
A.POM Sajit Tomy	Abuse: PO Sajit Tomy stopped § 87(2)(b)	
B.POM Gabor Kolman	Abuse: PO Gabor Kolman stopped § 87(2)(b)	
C.POM Gabor Kolman	Abuse: PO Gabor Kolman frisked § 87(2)(b)	
D.POM Gabor Kolman	Abuse: PO Gabor Kolman searched § 87(2)(b)	
E.POM Sajit Tomy	Force: PO Sajit Tomy used physical force against § 87(2)(b)	
F.POM Gabor Kolman	Force: PO Gabor Kolman used physical force against § 87(2)(b)	
G.POM Sajit Tomy	Discourtesy: PO Sajit Tomy spoke discourteously to § 87(2)(b)	
H.POM Sajit Tomy	Force: PO Sajit Tomy used pepper spray against § 87(2)(b)	
I.POM Sajit Tomy	Force: PO Sajit Tomy used pepper spray against § 87(2)(b)	
J.POM Sajit Tomy	Force: PO Sajit Tomy used pepper spray against an individual.	
K.POM Sajit Tomy	Force: PO Sajit Tomy pointed his gun at § 87(2)(b)	
L.POM Sajit Tomy	Force: PO Sajit Tomy struck § 87(2)(b) with a gun.	
M.POM Gabor Kolman	Force: PO Gabor Kolman used physical force against § 87(2)(b)	
N.POM Sajit Tomy	Force: PO Sajit Tomy used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
O.POM Sajit Tomy	Force: PO Sajit Tomy struck § 87(2)(b) with a gun.	

Case Summary

On January 5, 2016, § 87(2)(b) filed this complaint on behalf of § 87(2)(b) via the Office of the Mayor, which generated casework no. 844710. It was referred to the CCRB on January 6, 2016 [BR 14].

On January 4, 2016, Sgt. Edward DeGiacomo of the Housing Bureau of Manhattan Impact Response Team (HBM IRT) filed this complaint on behalf of § 87(2)(b) and § 87(2)(b) via IAB, which generated log no. 16-0766. It was referred to the CCRB on January 12, 2016 [NYPD 14].

On January 4, 2016, at 10:10 p.m., § 87(2)(b) stepped out from his girlfriend § 87(2)(b)'s apartment § 87(2)(b) in Manhattan and entered the stairwell. On the tenth floor landing, § 87(2)(b) observed PO Sajit Tomy and PO Gabor Kolman of HBM IRT standing there. § 87(2)(b) exited back out of the stairwell to the hallway. PO Tomy and PO Kolman ran up the stairwell and approached him in the elevator bank of the eleventh floor to stop him and ask why he ran, where he lived, and to show identification (**Allegations A and B**). § 87(2)(b) was placed with his hands up and against the wall as PO Kolman frisked and retrieved § 87(2)(b)'s wallet from his back pocket (**Allegations C and D**). After PO Kolman handcuffed § 87(2)(b) PO Tomy allegedly grabbed § 87(2)(b) by the face and asked what he had in his mouth (**Allegation E**), § 87(2)(b) yelled out for help and § 87(2)(b) stepped out to see what was going on. As PO Tomy and PO Kolman struggled to bring § 87(2)(b) to the ground (**Allegation F**), PO Tomy told § 87(2)(b) "Get the fuck out" (**Allegation G**). PO Tomy took out his pepper spray and sprayed § 87(2)(b) in the face (**Allegation H**).

Then, § 87(2)(b) walked up to the § 87(2)(b), § 87(2)(b), § 87(2)(g). § 87(2)(b) observed PO Kolman holding § 87(2)(b)'s arms while PO Tomy had his left shoulder against § 87(2)(b)'s chest and a can of mace in his right hand. § 87(2)(b) asked what was going on. Upon seeing § 87(2)(b) and the other individual, PO Tomy sprayed them with mace (**Allegations I and J**). PO Tomy then put his mace can away and pointed his gun at § 87(2)(b) (**Allegation K**). PO Tomy struck § 87(2)(b) on the head once with his gun (**Allegation L**). A physical struggle between § 87(2)(b) and § 87(2)(b) with PO Tomy and PO Kolman ensued (**Allegations E and F continued, Allegations M and N**). § 87(2)(b) was struck on the head multiple times with PO Tomy's gun (**Allegation O**). § 87(2)(b) was arrested for assault and resisting arrest [NYPD 20]. § 87(2)(b) was arrested for § 87(2)(b) § 87(2)(a) 160.50 [NYPD 21].

§ 87(2)(b) and § 87(2)(b) were subsequently transported to § 87(2)(b). § 87(2)(b) sustained four lacerations to his scalp, which were closed with twelve staples [Privileged]. § 87(2)(b) sustained one laceration to his scalp requiring two staples to close, and was also diagnosed with soft tissue injury (concussion), and swelling to his hands [Privileged].

There are only two exterior cameras at § 87(2)(b) in Manhattan, which did not capture the incident and only shows § 87(2)(b) and § 87(2)(b) being removed from the building. Sgt. Christopher Morano of IAB Group 54, the assigned investigator to the concurrent IAB investigation, has not yet scheduled or interviewed any officers in regards to this case. § 87(2)(g)

Video Evidence



201600151 (1).mp4

IA 79, BR 02



201600151 (2).mp4

IA 80, BR 03

Mediation, Civil and Criminal Conviction Histories

- As § 87(2)(b) and § 87(2)(b) were arrested and sustained injuries, this case was not suitable for mediation.
- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of April 11, 2016 with regard to the incident.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b) [BR 13].
- § 87(2)(b) has never filed a complaint with the CCRB [BR 13].
- PO Sajit Tomy has been a member of the service for 2 years and this is the first CCRB complaint against him.
- PO Gabor Kolman has been a member of the service for 2 years and this is the first CCRB complaint against him.

Potential Issues

- The undersigned exhausted contact attempts to § 87(2)(b). On February 5, 2016, the undersigned called § 87(2)(b) and she provided a telephone statement [BR 05]. § 87(2)(b) stated she would check her work schedule for her availability to be interviewed and call the undersigned back the same day. The undersigned called § 87(2)(b) again on February 8th, 10th, 12th, 16th, and 19th of 2016, and with each call, left a voice message requesting a call back. On February 10, 2016, the undersigned called § 87(2)(b) in an attempt to reach § 87(2)(b). Please call letters were mailed to § 87(2)(b) on February 10th, 16th, and 22nd of 2016. To date, no letters have been returned by the USPS. On February 22, 2016, the undersigned called § 87(2)(b) and scheduled an interview appointment for the same day. § 87(2)(b) called to reschedule the appointment to February 25, 2016. On February 25, 2016, § 87(2)(b) missed her scheduled appointment without calling to cancel or reschedule. On March 9, 2016, § 87(2)(b) called the undersigned and scheduled an interview appointment for the following day. On March 10, 2016, § 87(2)(b) missed her scheduled appointment without calling to cancel or

reschedule. As a result, the investigation does not have a verified statement from her.

- As § 87(2)(b) and § 87(2)(b) denied the presence of a fourth civilian in their statements to the CCRB and the officers could not identify the civilian they alleged was present, the investigation was unable to contact the unidentified individual.

Finding and Recommendations

Allegations Not Pleaded

- **Discourtesy:** § 87(2)(b) alleged PO Tomy spoke discourteously towards § 87(2)(b) [BR 04]. As § 87(2)(b) did not allege this [BR 01], § 87(2)(g)

Recommendations

- **Allegation A – Abuse of Authority: PO Sajit Tomy stopped** § 87(2)(b)
 - **Allegation B – Abuse of Authority: PO Gabor Kolman stopped** § 87(2)(b)
 - **Allegation C – Abuse of Authority: PO Gabor Kolman frisked** § 87(2)(b)
 - **Allegation D – Abuse of Authority: PO Gabor Kolman searched** § 87(2)(b)
- In his statement to the CCRB, § 87(2)(b) stated he had just thrown out the trash and stepped into the stairwell to smoke a cigarette when he observed PO Tomy and PO Kolman on the § 87(2)(b). § 87(2)(b) explained that he did not want to smoke his cigarette next to the officers so he exited the stairwell and closed the door behind him. § 87(2)(b) heard PO Tomy and PO Kolman run up the stairs and then they approached him in the elevator bank to ask him why he ran away. § 87(2)(b) informed the officers he did not run, and that he lived in the building. § 87(2)(b) told PO Tomy and PO Kolman that because he saw them in the stairwell, he went to go walk around to go to the other stairwell. PO Tomy and PO Kolman asked § 87(2)(b) what he was doing in the stairwell and § 87(2)(b) told them he was there to smoke because he was not allowed to in the house. At the time, § 87(2)(b) had his cigarette in hand. When the officers asked § 87(2)(b) where he lived, § 87(2)(b) began to walk and talk with the officers to his apartment door. PO Kolman asked § 87(2)(b) if he had anything on him and when he told them he did not have anything, he was asked for his identification. § 87(2)(b) alleged PO Kolman frisked his outer garments. Then, PO Tomy asked him where he kept his wallet and PO Kolman reached into his back pocket to remove his wallet and his identification card from his wallet. PO Kolman noted § 87(2)(b)'s identification was a prison card and handcuffed him. PO Tomy observed § 87(2)(b) chewing something white in his mouth; § 87(2)(b) denied having any narcotics and explained that he had been chewing a white piece of gum at the time.

In his statement to IAB, § 87(2)(b) stated he was going downstairs to meet § 87(2)(b) and when the elevator took too long to arrive, he decided to take the stairs [BR 12]. When § 87(2)(b) entered the stairwell and observed PO Tomy and PO Kolman there, he turned around to walk out from the stairwell. As § 87(2)(b) is on parole, he did not want to come in contact with the officers. PO Kolman and PO Tomy ran up the stairs and approached him in the elevator bank to ask him why he ran from them. § 87(2)(b) informed the officers that he was on parole, which is why he walked off. § 87(2)(b) told the officers he lived there on the eleventh floor. PO Kolman searched § 87(2)(b) before handcuffing him.

PO Tomy stated that while conducting vertical patrols in § 87(2)(b), a drug-prone location, he and PO Kolman were descending from the § 87(2)(b) when § 87(2)(b) opened the door leading to the § 87(2)(b) stairwell and made eye contact with PO Tomy [BR 07]. § 87(2)(b) looked shocked to see the officers standing there and

immediately backtracked out of the stairwell to run down the hallway. PO Tomy and PO Kolman followed § 87(2)(b) § 87(2)(b) did not make any comments and they did not say anything to § 87(2)(b). They did not lose sight of § 87(2)(b) as they pursued him. As they approached § 87(2)(b) from halfway down the hall, PO Tomy asked § 87(2)(b) “Do you live here? What’s your name?” While facing the door to the apartment, § 87(2)(b) reached his left hand into his pocket to take out what appeared to be narcotics and place it in his mouth. PO Tomy described the alleged narcotics as a “white plastic thing.” When PO Tomy stood next to § 87(2)(b) he observed § 87(2)(b)s cheek ‘bulged up on the side’ as he tried to chew the object in his mouth. PO Tomy and PO Kolman continued to ask § 87(2)§ 87(2)(b) if he lived there and what his name was. § 87(2) moved the item into his cheek and told them, “I’m on parole, don’t fuck with me.” § 87(2)(b) was handcuffed without resistance for § 87(2)(a) 160.50 § 87(2)(b). Afterwards, § 87(2)(b) was frisked and searched by PO Kolman without incident.

PO Kolman stated that when § 87(2)(b) opened the stairwell door, PO Kolman made eye contact with § 87(2)(b) [BR 06]. § 87(2)(b) who had been looking at something in his hand, said, “Oh shit,” and took off at full-sprint back out the door. PO Kolman explained that everything about his quick encounter with § 87(2)(b) was suspicious and so PO Kolman decided to pursue him. § 87(2)(b) ran to the end of the hallway and was attempting to enter an apartment. When § 87(2)(b) realized he could not get inside the apartment, he just stood with his back to the approaching officers as he put something in his mouth to swallow. PO Kolman did not see the object before it was placed into § 87(2)§ 87(2)(b)s mouth. PO Kolman could tell the object was approximately the size of an egg. § 87(2)(b)s hand dropped away from his mouth when the officers approached him. § 87(2)(b) did not speak when PO Kolman and PO Tomy asked him who he was, why he ran, and if he lived in the building. PO Kolman and PO Tomy asked § 87(2)(b) the same questions numerous times, and also knocked on the door § 87(2)(b) had been attempting to enter. PO Kolman and PO Tomy made numerous verbal requests for § 87(2)§ 87(2)(b) to provide his identification but he continued to refuse to answer their questions or to identify himself. PO Kolman felt § 87(2)(b) was a safety issue because he would not step away from the front door of the apartment, refused to cooperate with them, and had on a long black coat, so he handcuffed § 87(2)(b). PO Kolman further stated he intended to detain § 87(2)(b) and frisk him for weapons as § 87(2)(b)§ 87(2)(b) was not being forthcoming in his reason for being in the building, which was grounds for an arrest for § 87(2)(a) 160.50 § 87(2)(b). PO Kolman explained that as they were in a NYCHA building, § 87(2)(b) either had to live in the building, have some form of business in the building, or know someone in the building who could vouch for him. As no one answered the door to the apartment and § 87(2)§ 87(2)(b) did not offer the officers any additional information, they had no way to determine if he had a legitimate reason to be in the building.

Officers may approach a citizen in a non-threatening way to request information when there is some objective credible reason for that interference not necessarily indicative of criminality (aka, a “level one” interaction) People v. Debour, 40 NY2d 210 (1976) [BR 25]. Officers are allowed to approach an individual and inquire about basic, nonthreatening matters such as name, address, and destination if they have an articulable reason to do so; the reason need not be indicative of criminality. Individuals may not be selected for questioning based on their mere presence in a public housing building; there must be evidence of prior criminality in the building. People v. Ortiz, 2011 NY Slip Op 51036U (Crim. Ct. Kings Cty., 2011) [BR 24]. The courts further established in Debour that questioning becomes more ‘pointed’ under a common-law inquiry (aka, a “level two” interaction), which must be supported by a founded suspicion that criminality is afoot. Officers can use reasonable force to stop and detain an individual.

whenever they have a reasonable suspicion that the individual has committed, is committing, or is about to commit a crime (aka, a “level three” interaction). When there is nothing to establish that a crime has been or is being committed, flight, like refusal to answer, is an insufficient basis for seizure or for the limited detention that is involved in pursuit. People v. Madera, 189 A.D.2d (1993) [BR 28]. Pursuit of a fleeing individual constitutes a stop People v. Nunez, NY Slip Op 7753 (2013) [BR 30]. Upon determining that an individual is not a resident, an officer is justified in arresting the person if they do not indicate who they are visiting in the building. Ortiz [BR 24]. NY Penal Law §140.05 states a person is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises [BR 29]. With probable cause to believe that an offense was committed and that the subject arrested committed it, an officer may engage in a search of the subject incident to arrest. Debour.

§ 87(2)(g)

- **Allegation E – Force: PO Sajit Tomy used physical force against** § 87(2)(b)
- **Allegation F – Force: PO Gabor Kolman used physical force against** § 87(2)(b)
- **Allegation H – Force: PO Sajit Tomy used pepper spray against** § 87(2)(b)
- **Allegation I – Force: PO Sajit Tomy used pepper spray against** § 87(2)(b)
- **Allegation J – Force: PO Sajit Tomy used pepper spray against** § 87(2)(b)
- **Allegation M – Force: PO Gabor Kolman used physical force against** § 87(2)(b)
- **Allegation N – Force: PO Sajit Tomy used physical force against** § 87(2)(b)

In his statements to IAB and the CCRB, § 87(2)(b) alleged that after he was handcuffed, PO Tomy observed him chewing something white in his mouth [BR 12; BR 04]. PO Tomy grabbed § 87(2)(b) by his jaw and asked him what he had in his mouth. § 87(2)(b) lifted his head up and tried to step back from PO Tomy’s grasp. § 87(2)(b) yelled out for help and told PO Tomy he did not have anything in his mouth. Then, PO Tomy and PO Kolman attempted to put § 87(2)(b) on the ground. However, § 87(2)(b) refused to go down; their struggle moved them from the front of his apartment back to the elevator bank, and PO Tomy

pepper sprayed § 87(2)(b). In his IAB statement, § 87(2)(b) stated that when § 87(2)(b) stepped out from the apartment, he instructed her to get § 87(2)(b) who was downstairs. § 87(2)(b) and an unidentified male came out from the stairwell and asked the officers what they were doing. PO Tomy put his mace away and told § 87(2)(b) to back away from them. In his CCRB statement, § 87(2)(b) suggested § 87(2)(b) came on his own and denied another civilian being present. § 87(2)(b) could not elaborate on how he and § 87(2)(b) were then thrown to the ground.

§ 87(2)(b) stated to IAB and the CCRB that when he stepped out from the stairwell and saw PO Tomy with a gun out, he turned to leave [BR 11; BR 01]. § 87(2)(b) did not observe § 87(2)(b) being pepper sprayed and did not allege he was pepper sprayed himself. § 87(2)(b) heard running behind him and someone tackled him to the ground, which caused him to fall on his hands and knees.

§ 87(2)(b) did not allege in her IAB statement she observed § 87(2)(b) being pepper sprayed [NYPD 07]. In her telephone statement to the CCRB, § 87(2)(b) stated she stepped out into the hallway when she heard § 87(2)(b) yelling for help [BR 05]. She observed § 87(2)(b) handcuffed and almost kneeling on the ground. PO Tomy warned § 87(2)(b) he would be pepper sprayed, and then proceeded to spray § 87(2)(b) in the face. § 87(2)(b) fell to his knees. Some of the spray reached § 87(2)(b) and irritated her eyes and nose so she returned to her apartment. In neither statement did § 87(2)(b) mention that she went to get § 87(2)(b).

PO Tomy did not remember if he grabbed § 87(2)(b)'s face to try and get him to spit out the narcotics in his mouth [BR 07]. He and PO Kolman issued § 87(2)(b) numerous orders to spit out the narcotics from his mouth. PO Tomy stated that as he and PO Kolman escorted § 87(2)(b) down the hallway, he began to kick at PO Tomy and PO Kolman in an attempt to escape and flee to the stairwell. PO Tomy and PO Kolman struggled to hold on tightly to § 87(2)(b). The officers also attempted to take § 87(2)(b) down to the ground but he deflected their attempts. PO Tomy warned § 87(2)(b) numerous times he would utilize his pepper spray if § 87(2)(b) did not cooperate. § 87(2)(b) continued to struggle to free himself from the officers even after PO Tomy sprayed him. The pepper spray went everywhere because PO Tomy could not keep a steady stream with § 87(2)(b) jerking him and PO Kolman around. PO Tomy managed to spray PO Kolman, § 87(2)(b) and himself in the process. When § 87(2)(b) stepped out from the apartment, PO Tomy yelled at her to step back because he did not want to have to pepper spray her too. Meanwhile, § 87(2)(b) yelled instructions at § 87(2)(b) to get two men from downstairs. PO Kolman radioed for additional units at the time. Each time PO Tomy or PO Kolman let one hand off of § 87(2)(b) to use their radios, § 87(2)(b) used it to his advantage to struggle harder against them. PO Tomy utilized his pepper spray again, and ended up spraying himself again in the process. Within two minutes, § 87(2)(b) returned with § 87(2)(b) and an unidentified male. They approached PO Tomy, who disengaged from § 87(2)(b) and he told them to step back. PO Tomy then pepper sprayed § 87(2)(b) and the unidentified male to get them to back away. When § 87(2)(b) punched PO Tomy in the face, PO Tomy put his mace can away and pointed his gun at § 87(2)(b). When § 87(2)(b) attempted to throw another punch at PO Tomy, PO Tomy struck § 87(2)(b) on the head once with his gun. Then, § 87(2)(b) spat the drugs out of his mouth towards § 87(2)(b). § 87(2)(b) dove to the ground to grab it. PO Kolman let go of § 87(2)(b) and went to the ground to wrestle the narcotics from § 87(2)(b). As PO Tomy attempted to assist PO Kolman with handcuffing § 87(2)(b), § 87(2)(b) kicked at PO Tomy and PO Kolman. PO Tomy swung his gun behind him at § 87(2)(b).

§ 87(2)(b) an unknown number of times, and struck § 87(2)(b) on the head. *Allegations E, L, and O (gun pointed and struck with gun) are discussed and analyzed below.*

PO Kolman stated that as he frisked § 87(2)(b) § 87(2)(b) began to thrash around, twisting his body as he flailed and kicked his legs in an attempt to get away from the officers [BR 06]. § 87(2)(b) attempted and succeeded at leading the officers back down the hallway to the elevator bank where the stairwell and incinerator was. PO Kolman and PO Tomy made numerous attempts to take § 87(2)(b) down to the ground but were unable to do so. § 87(2)(b) came out from her apartment, got instructions from § 87(2)(b) to get help, and disappeared into the stairwell. § 87(2)(b) continued to thrash his body around. Then, PO Tomy took out his pepper spray and, without issuing any verbal warnings, sprayed § 87(2)(b). Some of the spray missed § 87(2)(b) and hit PO Kolman in the face; some back-fired onto PO Tomy's face as well. § 87(2)(b) continued to resist so PO Kolman requested for additional units to respond to their location. When § 87(2)(b) returned with § 87(2)(b) and an unidentified male, the two men approached § 87(2)(b) and the officers in an aggressive stance ready to fight and intervene in the arrest. PO Kolman and PO Tomy told them three or four times to get back. PO Tomy sprayed § 87(2)(b) and the unidentified male in a back and forth wave. Despite having been sprayed, § 87(2)(b) and the unidentified male continued to advance closer so PO Tomy pointed his gun at them. As § 87(2)(b) swung at PO Tomy to punch him, PO Tomy swung his right hand in an over-head motion and struck § 87(2)(b) on the top of his head with his gun. Then, § 87(2)(b) spat out the contraband from his mouth and § 87(2)(b) dove down to the ground to grab it. PO Kolman went down to tackle § 87(2)(b) who was down on his hands and knees. PO Kolman wanted to prevent § 87(2)(b) from getting up and attempted to handcuff him. Although PO Kolman did not observe PO Tomy strike § 87(2)(b) on the head with his gun, § 87(2)(b)'s injuries suggested that PO Tomy also struck § 87(2)(b) on the head with his gun during the incident. *Allegations E, L, and O (gun pointed and struck with gun) are discussed and analyzed below.*

When PO Frank Gashi responded to the call for assistance with his partner PO Sam Houari, they first observed PO Tomy attempting to handcuff § 87(2)(b); § 87(2)(b) was lying on his side, flailing his arms and twisting his body around in resistance [BR 09; BR 08]. PO Gashi stepped in to assist PO Tomy while PO Houari stood with PO Kolman and § 87(2)(b). PO Gashi stated that with his assistance, PO Tomy was able to pull § 87(2)(b)'s left arm back for him to cuff.

NYPD Patrol Guide §203-11 discusses the justification for the use of physical force by officers [BR 20]. It explains that an officer is able to use the minimum and necessary physical force to overcome resistance in the course of effecting an arrest, preventing an escape, and in self-defense from what "he or she reasonably believes to be the use or imminent use of physical force." An officer may use their pepper spray as a means of physical force pursuant to the minimum and necessary standard for use of force. NYPD Patrol Guide §212-95 [BR 22].

§ 87(2)(g)
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§ 87(2)(b) alleged in her telephone statement and IAB statement that PO Tomy used the word “fuck” towards her when he told her to step away [BR 05; NYPD 07].

§ 87(2)(g)

- **Allegation K – Force: PO Sajit Tomy pointed his gun at § 87(2)(b)**
- **Allegation L – Force: PO Sajit Tomy struck § 87(2)(b) with a gun.**
- **Allegation O – Force: PO Sajit Tomy struck § 87(2)(b) with a gun.**

§ 87(2)(g)

When § 87(2)(b) stepped out of the stairwell by himself onto the 11th floor, he observed PO Kolman holding § 87(2)(b)'s arms behind his back while PO Tomy had his left shoulder against § 87(2)(b)'s chest. PO Tomy held a can of mace in his right hand. § 87(2)(b) asked them what was going on. Upon seeing § 87(2)(b) PO Tomy put his mace away and drew his gun. § 87(2)(b) stated PO Tomy kept his gun pointed at the ground. Upon seeing PO Tomy with his gun, § 87(2)(b) turned to go back down the stairwell. § 87(2)(b) heard running behind him and someone tackled him to the ground. § 87(2)(b) fell onto his hands and knees. § 87(2)(b) heard § 87(2)(b) scream from behind him, "You're hitting me! You're gonna hurt me! You're gonna kill me!" Then, § 87(2)(b) began to feel someone hitting him on the head with a hard object over five times. § 87(2)(b) reached up to touch his head, felt blood, and then fell unconscious.

§ 87(2)(b) alleged in his CCRB and IAB statements that when § 87(2)(b) came out from the stairwell, he remained standing in the doorway to the stairs when he asked the officers what they were doing [BR 04; BR 12]. When PO Tomy put his can of mace away and drew his gun, § 87(2)(b) took steps backwards as PO Tomy reached out to grab him. § 87(2)(b) was “thrown to the ground” and landed sitting up, leaning against § 87(2)(b)’s back, as § 87(2)(b) had somehow also landed on the ground sitting up. Then, PO Tomy began hitting § 87(2)(b) on the top of his head with his gun approximately eight times. Next, PO Tomy struck § 87(2)(b) on the head four to five times while § 87(2)(b) screamed, “Oh shit it’s gonna go off!”

§ 87(2)(b) informed the CCRB that when she stepped out from her apartment, she observed § 87(2)(b) being pepper sprayed by PO Tomy [BR 05]. As she was about to return to her

apartment, she observed PO Tomy draw his gun and strike § 87(2)(b) on the back of his head with it three or more times. § 87(2)(b) was lying completely on the ground, face down. § 87(2)(b) returned to her apartment to rinse her eyes of the OC spray and when she stepped out of her apartment again, she observed § 87(2)(b) lying face down on the ground. In her statement to IAB, § 87(2)(b) stated she observed PO Tomy already had his gun drawn and proceeded to strike § 87(2)(b) on the head approximately three times [NYPD 07]. Then, § 87(2)(b)'s eyes became irritated by pepper spray in the air and she returned to her apartment. When § 87(2)(b) came back into the hallway, § 87(2)(b) was lying face down on the ground and additional officers were on top of him.

PO Tomy stated that after his attempt to subdue § 87(2)(b) and the unidentified male by pepper spraying them did not work, § 87(2)(b) closed the distance between himself and PO Tomy [BR 07]. § 87(2)(b) punched the right side of PO Tomy's head. PO Tomy believed § 87(2)(b) and the unidentified male were attempting to get around him to reach § 87(2)(b) who was standing behind him at the time with PO Kolman. PO Tomy threw his OC spray can to the ground, drew his gun, and took a stance with it, pointing it at § 87(2)(b). PO Tomy ordered § 87(2)(b) to step back. However, PO Tomy noted that § 87(2)(b) was standing so close to him and knew that he would not fire his weapon. § 87(2)(b) came at PO Tomy again in his fighting stance and took another swing at PO Tomy. With his gun in his right hand, PO Tomy swung his arm in an outward hook, and used his gun to impact § 87(2)(b) on the head to deflect his punch. PO Tomy could not see § 87(2)(b)'s reaction as his vision was too blurred by the pepper spray. By this point, § 87(2)(b) had moved forward to stand next to PO Tomy. § 87(2)(b) yelled at § 87(2)(b) "Take it, take the drugs!" and spat the narcotics out of his mouth in § 87(2)(b)'s direction. § 87(2)(b) dove down to grab it. PO Kolman released § 87(2)(b) to wrestle the narcotics from § 87(2)(b) on the ground. By this time, PO Tomy was exhausted and could barely see due to the pepper spray. Then, someone began to kick PO Tomy in the back and his legs. PO Tomy did not have time to put his gun away to draw his asp, so with his right hand he swung his gun behind him an unknown amount of times towards the person behind him. PO Tomy could not articulate if he was impacting anything when he swung his gun behind him. Once he stopped swinging his arm backwards, PO Tomy turned and observed § 87(2)(b) standing behind him.

PO Kolman observed § 87(2)(b) and the unidentified male approach PO Tomy and himself in an aggressive stance ready to fight and intervene in the arrest of § 87(2)(b) [BR 06]. PO Kolman and PO Tomy made three to four verbal attempts to tell § 87(2)(b) and the unidentified male to get back as they closed the distance. Despite having been sprayed by PO Tomy, § 87(2)(b) and the unidentified male continued to advance on them. PO Kolman explained that a lot of OC had gathered in their noses and eyes. After PO Tomy's failed attempt to use his pepper spray to get them to back away, PO Tomy drew his weapon and pointed it at § 87(2)(b) and the unidentified male while his left arm was still holding on to § 87(2)(b)'s right arm. PO Tomy told § 87(2)(b) and the unidentified male to get back but § 87(2)(b) continued to step in closer to PO Tomy. As § 87(2)(b) swung at PO Tomy, PO Tomy swung his right hand in an over-head motion to strike § 87(2)(b) on the top of his head once with his gun. § 87(2)(b) did not have much of a reaction to the strike. Then, § 87(2)(b) spat the contraband from his mouth onto the ground. § 87(2)(b) dove down to the ground to grab the contraband. PO Kolman disengaged himself from § 87(2)(b) to tackle § 87(2)(b) who was on all fours, to prevent § 87(2)(b) from getting up and to handcuff him. § 87(2)(b) was able to swipe his hand and slide the contraband along the floor to the unidentified male, who picked it up and fled into the stairwell. As PO Kolman struggled to handcuff § 87(2)(b) PO Tomy was struggling to hold on to § 87(2)(b).

Then, PO Tomy let go of § 87(2)(b) to assist him in handcuffing § 87(2)(b). PO Tomy still had his gun out. PO Kolman did not recall if PO Tomy struck § 87(2)(b) with his gun again. Without anyone holding him back, § 87(2)(b) began kicking at PO Kolman and PO Tomy to push them off of § 87(2)(b). § 87(2)(b) was able to stomp on PO Kolman's back a few times. PO Tomy got up from the ground and went to attempt to control § 87(2)(b). Although PO Kolman did not observe PO Tomy hit § 87(2)(b) on the head with his gun, PO Kolman presumed that PO Tomy struck § 87(2)(b) with a gun because he later observed § 87(2)(b) bleeding from his head.

PO Tomy was admitted to § 87(2)(b) to have his eyes flushed out, his hand x-rayed, and to be prescribed pain medication (for stiffness to his back, legs which were in shock, pain to his right wrist/hand, and overall pain to his whole body) [BR 07]. PO Tomy's Line of Duty injury report states that as he was attempting to make a lawful arrest, the defendant resisted by kicking his legs and lower back [NYPD 16]. During a struggle on the ground, PO Tomy sustained a bruise on his right hand and visible swelling. PO Tomy returned to work on January 11, 2016.

PO Kolman was admitted to § 87(2)(b) to have his eyes flushed out and a potentially pulled muscle in his left arm examined [BR 06]. PO Kolman's Line of Duty injury report states that as he was attempting to make a lawful arrest, the defendant resisted by kicking him in the right thigh [NYPD 16]. During a struggle on the ground, PO Kolman suffered a strained lower back. While attempting to arrest a second defendant, PO Kolman sustained a visible contusion on his forehead and a bruise on his left arm.

PO Gashi and PO Houari did not observe any officer with their gun drawn or hitting any civilians on the head [BR 09; BR 08]. PO Gashi and PO Houari each noted § 87(2)(b) and § 87(2)(b) had recently sustained head injuries and observed semi-dried blood from the unidentifiable head injuries. PO Gashi noted that § 87(2)(b) fell unconscious while in the ambulance en-route to § 87(2)(b).

IAB provided the investigation with a copy of the laboratory blood test report [NYPD 13]. § 87(2)(b)'s blood was found on PO Kolman's jacket and pants, and PO Tomy's jacket. § 87(2)(b)'s blood was found on PO Tomy's pants. Blood tests for PO Tomy and PO Kolman's firearms are pending.

§ 87(2)(b) and § 87(2)(b) were escorted by ambulance from § 87(2)(b) directly to § 87(2)(b) [see medical records and Medical Treatment of Prisoner Reports, BR 26]. § 87(2)(b) was admitted to the intensive care unit after he was brought in unconscious with soft tissue injury to his head. § 87(2)(b) remained in a coma for less than twenty-four hours. Roughly thirty-six hours later, his concussion was assessed as a mild brain injury. § 87(2)(b) sustained one laceration to his scalp (on his right parietal lobe), which was closed with two staples. *See photographs*, BR 17. § 87(2)(b) was discharged approximately sixty hours later. § 87(2)(b) sustained four lacerations to his scalp (two lacerations on his left frontal lobe, two lacerations on left parietal lobe); his injury was treated with Lidocaine, he was given a tetanus shot, and prescribed Motrin. *See photographs*, BR 16. The lacerations were irrigated copiously and closed with twelve staples. § 87(2)(b) was discharged roughly six hours later.

An officer must safeguard his weapon at all times, especially when in close contact and engaged in a struggle with a civilian. Drawing a firearm in such a situation is negligent. Police Department v. Strom, OATH Index No. 546/00 (2000) [BR 21]. A baton or nightstick blow to the head constitutes deadly force. Police Department v. Bolusi, OATH Index No. 583/92 (1992)

[BR 27]. NYPD Patrol Guide §203-12 prohibits officers from using deadly force unless they have probable cause to believe that they must protect themselves or another person present from imminent death or serious physical injury [BR 26]. Striking an individual on the head with a flashlight in self-defense was found to be reasonable and not excessive because there was no intent to use it as a club and it was limited in nature. The use of a nightstick, radio, or flashlight to inflict a limited amount of force may be appropriate to effectuate an arrest or in self-defense. Police Department v. Stiso, OATH Index No. 1886/99 (1999) [BR 23].

§ 87(2)(g)



§ 87(2)(g)



Squad: 3

Investigator: _____ Rebecca Ho _____ 04/14/2016

	Signature	Print	Date
Supervisor:	_____	<u>Dane Buchanan</u>	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date